

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	MM Docket No. 01-131
FM Broadcast Stations.	)	RM-10148
(Benjamin, Texas)	)	
	)	
	)	
	)	

**REPORT AND ORDER**  
(Proceeding Terminated)

**Adopted: June 5, 2002**

**Released: June 14, 2002**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it the Notice of Proposed Rule Making in this proceeding. 16 FCC Rcd 12680 (2001). First Broadcasting Company, L.P., Next Media Licensing, Inc., Rawhide Radio, L.L.C., Capstar TX Limited Partnership and Clear Channel Broadcasting Licenses, Inc. ("Joint Parties") filed Comments. Charles Crawford filed Comments and Reply Comments. For the reasons discussed below, we are dismissing the underlying proposal to allot Channel 257C2 to Benjamin, Texas, and terminating this proceeding.

2. In a separate proceeding in MM Docket No. 00-148, we issued a Notice of Proposed Rule Making proposing the allotment of Channel 233C3 to Quanah, Texas. 15 FCC Rcd 15809 (2000). The comment date in that proceeding was October 10, 2000. The Joint Parties filed a timely Counterproposal in that proceeding. Included in that Counterproposal was a proposal to allot Channel 257A to Knox City, Texas. In this proceeding, Charles Crawford filed his Petition for Rule Making proposing the allotment of Channel 257C2 at Benjamin on May 18, 2001. That proposal is mutually exclusive with the pending Channel 257A proposal at Knox City in MM Docket No. 00-148. In order for the Benjamin proposal to be considered, that proposal must have been filed by the October 10, 2000, comment date in MM Docket No. 00-148. Charles Crawford did not do so. Accordingly, we are dismissing the Benjamin proposal as untimely. See Section 1.420(d) of the Commission's Rules; see also Pinewood, South Carolina, 5 FCC Rcd 7609 (1990).<sup>1</sup>

3. In his Reply Comments, Charles Crawford argues that dismissal of his Benjamin proposal would "run counter to fundamental due process and fair notice protections." We disagree. The Notice in MM Docket 00-148 elicited counterproposals which, in turn, could cause the subsequent exclusion of the

<sup>1</sup> At the time the Notice of Proposed Rule Making in this proceeding (MM Docket No. 01-131) was issued, the staff was unaware of the mutual exclusivity between Crawford's proposal in this proceeding and the Knox City proposal for Channel 257A that was included in the Counterproposal in MM Docket No. 00-148, because the Fort Knox proposal had not yet been entered into our data base. If the Fort Knox proposal had been included in the data base at that time, Crawford's Petition for Rule Making would have returned as unacceptable for filing.

Benjamin proposal or any other proposal in conflict with a timely counterproposal. The filing of the Knox City Counterproposal and the resulting exclusion of the Benjamin proposal from consideration is merely doing that which we announced that we could do.<sup>2</sup> As such, this procedure meets the “logical outgrowth” test applied by the Court of Appeals to determine whether a rulemaking action was based upon adequate notice and opportunity for public participation. See Weyerhaeuser Company v. Costle, 590 F.2d 1011 (D.C. Cir. 1978); Owensboro on the Air v. United States, 262 F.2d 702 (D.C. Cir. 1958); see also Pinewood, South Carolina, *supra*. We also continue to believe that the continuous filing of rulemaking proposals without regard to a cut-off date is not conducive to the efficient transaction of Commission business.

4. Charles Crawford also contends that the Joint Parties’ Counterproposal is “seriously flawed” and “fatally defective” and should not preclude consideration of his Benjamin proposal in this proceeding. Again, we disagree. Any purported deficiency in the Joint Parties Counterproposal will be considered in the context of MM Docket No. 00-148. In the event the Joint Parties’ Counterproposal is ultimately dismissed or Channel 257A at Knox City is not allotted in that proceeding, Charles Crawford may then file his proposal for a Channel 257C2 allotment at Benjamin, Texas. At this point in time, we do not see any public interest benefit in continuing to consider a Channel 257C2 allotment at Benjamin contingent upon an action in a separate proceeding.

5. Accordingly, IT IS ORDERED That the Petition for Rule Making filed May 18, 2001 by Charles Crawford, proposing to allot Channel 257C2 to Benjamin, Texas, IS DISMISSED.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief, Audio Division  
Office of Broadcast License Policy  
Media Bureau

---

<sup>2</sup> See paragraph 3(b) of the Appendix to the Notice of Proposed Rule Making in this proceeding, which explains that petitions for rule making that conflict with the proposals in the Notice will be considered as comments in the proceeding as long as they are filed before the date for filing initial comments. Further, paragraph 3(b) explains that if such petitions for rule making are filed later than the comment date, they will not be considered in connection with the decision in this docket. See also Section 1.420(d) of the Commission’s Rules and Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments, 7 FCC Rcd 4917 (1992), recon. granted in part and denied in part, 8 FCC Rcd 4743 (1993). The Appendix is customarily included as part of all Notices of Proposed Rule Making.